

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 DISTRICT OF DELAWARE

4 DORENDA M. DAVIS,
Plaintiff

5 v.

6 MIDLAND FUNDING, LLC, ASSIGNEE
7 OF HOUSEHOLD; MIDLAND CREDIT
8 MANAGEMENT, INC.; and
ENCORE CAPITAL GROUP, INC.
9 Defendants

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)
) Civil Action No.:

)
) COMPLAINT AND DEMAND FOR
) JURY TRIAL

)
) (Unlawful Debt Collection Practices)

10 **COMPLAINT**

11 DORENDA M. DAVIS ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C.,
12 alleges the following against Defendants, MIDLAND FUNDING, LLC, ASSIGNEE OF
13 HOUSEHOLD ("Midland"), Midland Credit Management, Inc. ("MCM"), and Encore Capital
14 Group, Inc. ("Encore") (collectively "Defendants") Plaintiff states as follows:
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17 **INTRODUCTION**

18 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C.
19 § 1692 *et seq.* ("FDCPA").

20 **JURISDICTION AND VENUE**

21 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that
22 such actions may be brought and heard before "any appropriate United States district court
23 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original
24 jurisdiction over the federal claims contained therein.
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1 3. Defendant conducts business in the State of Delaware and therefore, personal
2 jurisdiction is established.

3 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

4 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

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7 **PARTIES**

8 6. Plaintiff is a natural person residing in Bear, Delaware 19701.

9 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

10 8. Defendant MIDLAND is a national debt collection company with corporate
11 headquarters located at 8875 Aero Drive, Suite 200, San Diego, California, 92123.

12 9. Defendant MCM is a national debt collection company with corporate headquarters
13 located at 8875 Aero Drive, Suite 200, San Diego, California, 92123.

14 10. Defendant ENCORE is a national debt collection company with corporate
15 headquarters located at 8875 Aero Drive, Suite 200, San Diego, California, 92123.

16 11. Defendants are each a “debt collector” as that term is defined by 15 U.S.C.
17 §1692a(6), and sought to collect a consumer debt from Plaintiff.

18 12. Defendants acted through their agents, employees, officers, members, directors,
19 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

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22 **PRELIMINARY STATEMENT**

23 13. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,
24 which prohibits a catalog of activities in connection with the collection of debts by third parties.
25 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that

1 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
2 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
3 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
4 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
5 unconscionable conduct, both generally and in a specific list of disapproved practices.

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7 14. In particular, the FDCPA broadly enumerates several practices considered
8 contrary to its stated purpose, and forbids debt collectors from taking such action. The
9 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
10 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
11 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
12 collector may not use any false, deceptive, or misleading representation or means in connection
13 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
14 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
15 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
16 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
17 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
18 connection with the collection of a debt.

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20 15. In enacting the FDCPA, the United States Congress found that “[t]here is
21 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
22 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
23 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
24 additionally found existing laws and procedures for redressing debt collection injuries to be
25 inadequate to protect consumers. 15 U.S.C. § 1692b.

1 16. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
2 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
3 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
4 collection practices are not competitively disadvantaged, and to promote consistent State action
5 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.
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8 **FACTUAL ALLEGATIONS**

9 17. At all pertinent times hereto, Defendants were allegedly hired to collect a debt
10 relating to a debt allegedly originally owed to Citibank.

11 18. The alleged debt at issue arose out of transactions which were primarily for
12 personal, family, or household purposes.

13 19. Based on information and belief, Defendant MCM was acting on behalf of
14 Defendants MIDLAND and ENCORE, at all times set forth herein.

15 20. Defendant MCM began contacting Plaintiff by telephone from the following
16 phone number in efforts to collect an alleged debt: (800) 265-8825. The undersigned has
17 confirmed that the number belongs to Defendant MCM.

18 21. Defendant MCM contacted Plaintiff at her place of employment on April 13,
19 2010, informing Plaintiff about various payment options to resolve the alleged debt.
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21 22. Plaintiff was not permitted to receive personal telephone calls of this nature at
22 work.

23 23. On or about June 22, 2010, Defendant MCM sent correspondence entitled “PRE-
24 LEGAL NOTIFICATION” to Plaintiff seeking and demanding for an alleged debt owed to
25 Citibank. See Exhibit A, Defendant’s June 22, 2010 letter.

1 24. Defendant MCM failed to identify itself as a debt collector in a conspicuous
2 place, on the front of its June 22, 2010 correspondence to Plaintiff. See Exhibit A.

3 25. Instead, Defendant MCM identified itself as a debt collector in an inconspicuous
4 place, such as on the back of its correspondence to Plaintiff, with the intent to mask its true
5 identity as a debt collector. See Exhibit A.

6 26. Defendant MCM's June 22, 2010 letter goes on to threaten: "This letter is to
7 inform you that we are considering forwarding this account to an attorney with the intent to
8 initiate legal action to satisfy the debt." See Exhibit A.

9 27. The June 22, 2010 letter further indicated: "If we don't hear from you by 07-22-
10 2010, we may proceed with forwarding this account to an attorney." See Exhibit A.

11 28. When no response was received by July 22, 2010, Defendants did not take any
12 legal action against Plaintiff, and has not since this date.

13 29. Based on information and belief, Defendants did not intend to take legal action
14 against Plaintiff.

15 30. The June 22, 2010 correspondence presented Plaintiff with two options with
16 regard to the debt, both requiring Plaintiff to make a payment. See Exhibit A.

17 31. Within five (5) days of its initial communication with Plaintiff, Defendants failed
18 to send Plaintiff written correspondence indicating the name of the creditor to whom the debt
19 was owed, advising her of her rights to dispute the debt and/or request verification of the debt.

20 32. Had Defendants provided an appropriate communication in accordance with 15
21 U.S.C. §1692g, Plaintiff would have been alerted of her right to validate and/or dispute the debt.

22 33. Defendants' actions in attempting to collect the alleged debt were harassing, and
23 highly deceptive.
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CONSTRUCTION OF APPLICABLE LAW

34. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

35. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

36. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it

1 ensures protection of all consumers, even naive and trusting, against deceptive collection
2 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
3 collection notices. Clomon, 988 F. 2d at 1318.

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6 **COUNT I**
7 **DEFENDANT VIOLATED THE**
8 **FAIR DEBT COLLECTION PRACTICES ACT**

9 31. In its actions to collect a disputed debt, Defendants violated the FDCPA in one or
10 more of the following ways:

- 11 a. Harassing, oppressing or abusing Plaintiff in connection with the
12 collection of a debt, in violation of 15 U.S.C. §1692d.
13 b. Using false, deceptive, or misleading representations or means in
14 connection with the collection of any debt, in violation of 15 U.S.C.
15 §1692e;
16 c. Threatening to take action that it could not legally take or did not intend
17 to take in violation of 15 U.S.C. §1692e(5);
18 d. Using false representations or deceptive means to collect or attempt to
19 collect a debt or obtain information concerning Plaintiff, in violation of
20 15 U.S.C. §1692e(10);
21 e. Failing to disclose to Plaintiff its identity as a debt collector and failing
22 to disclose to Plaintiff that it was attempting to collect a debt and any
23 information obtained will be used for that purpose, in violation of 15
24 U.S.C. §1692e(11);
25 f. Using unfair or unconscionable means to collect or attempt to collect
any debt, in violation of 15 U.S.C. §1692f;

- 1 g. Defendant violated §1692g(a) of the FDCPA by failing to send written
2 notification, within five (5) days after its initial communication with
3 Plaintiff, indicating the name of the creditor to whom the debt is owed,
4 and advising Plaintiff of her rights to dispute the debt or request
5 verification of the debt; and
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7 h. By acting in an otherwise deceptive, unfair and unconscionable manner
8 and failing to comply with the FDCPA.

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10 WHEREFORE, Plaintiff, DORENDA M. DAVIS, respectfully prays for a judgment as
11 follows:

- 12 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
13 1692k(a)(1);
14 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant
15 to 15 U.S.C. § 1692k(a)(2)(A);
16 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
17 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
18 d. Any other relief deemed appropriate by this Honorable Court.
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, DORENDA M. DAVIS, demands a jury trial in
this case.

DATED: 04/26/11

KIMMEL & SILVERMAN, P.C.

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